

USAF review completed.

OFFICE OF ALIEN PROPERTY
DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

MEMORANDUM TO: Inter-Agency Conference on Captured
Enemy Documentation
FROM: Office of Alien Property,
Department of Justice
SUBJECT: Report of Office of Alien Property, Department
of Justice, on Captured Enemy Documentation.

FEB 24 1951

This report is confined solely to the functions of the Office of Alien Property of the Department of Justice, inasmuch as that is the division of the Department charged with the responsibility of administering enemy property in this country under the Trading with the Enemy Act, as amended.

Among the powers exercised by this Office under that Act is the power to acquire by vesting action any property or interest in the United States owned by an enemy country (Germany or Japan) or nationals thereof. Among the categories of such property which have been vested are tangibles, such as manuscripts, and intangibles, such as the rights in this country to exploit manuscripts. Under the copyright statute, and under the common and statutory law of the various states of the United States, property exists in material subject to copyright which is separable from the property in the manuscript itself. Therefore, this Office can vest either the intangible rights or the manuscript or both types of property. Other than motion picture film, if such are to be categorized as documents, this Office has vested very few physical documents. It has vested, however, on a broad scale the intangible rights in material subject to copyright.

The acquisition of such rights was motivated by several purposes, including (1) preventing the use of such property for the benefit of enemy economy; (2) realizing funds therefrom for the benefit of this government after payment of American creditors of the former owners (The balance of such funds has been allocated to the payment of war claims under the War Claims Act of 1948.); (3) cutting off the possibility of future claims for use of such material and, under a licensing program, making it available for exploitation to private persons and governmental agencies. (Generally speaking royalty-bearing licenses are granted for commercial exploitation and royalty-free licenses for governmental use are granted to governmental agencies.)

It does not appear that under present law there is any method of acquiring enemy property in this country without giving rise to possible claims by former owners except that provided by the Trading with the Enemy Act, as amended. Since all property in the United States of enemy

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nationals is, under that Act, subject to the supervisory and vesting powers exercised by this Office, all use in this country of enemy material subject to copyright is within its jurisdiction. It has been our practice to exercise jurisdiction mainly with respect to commercial use of enemy material subject to copyright. There have been instances, however, where an agency of the government has requested that this Office vest documents and rights therein so that title can be acquired by the government and rights therein can be licensed for governmental purposes. Such action precludes the possibility of future claims by former enemy owners against the government or the personnel handling the material for return of the document or for compensation for its use. (Transactions in current works of German nationals have been generally licensed subject to certain conditions.)

This Office has not attempted a program of investigating whether governmental use of enemy documents by other agencies of the government has given, or will give, rise to future claims with respect to the use of material in which the intangible rights have not been vested. There have been certain instances where that possibility has been called to the attention of other agencies and vesting and licensing actions have been taken. Further, this Office has not investigated whether title to the physical property in any particular documents, whether subject to copyright or not, has been acquired by the agency holding such property. Nor has there been any attempt to determine whether the methods by which the physical documents were acquired by any particular agency were based upon a legal capacity to seize and obtain title to the tangible property if title is claimed.

On the other hand, it is the position of this Office that if the rights in the material are protected under the statutes or common law of the United States and the various states thereof, under present law they can only be seized by vesting action under the Trading with the Enemy Act, as amended. This Office is not in a position to investigate all questions of the use in this country of enemy documents by various governmental agencies (as to whether or not there are in the material property rights under the municipal law of the United States) or whether title to the physical documents has been acquired.

It should be noted that the provisions in the Copyright Statute excluding government publications as copyrightable applies only to publications of the United States Government and does not apply to the documents or publications of foreign governments. It does not appear that it can be definitely concluded as a general proposition of law that documents of a foreign country, whether of an official nature or not, do not contain material subject to copyright under the laws of this country. Therefore the publication of such material if unvested may give rise to claims against the government and government personnel involved in its publication.

It would appear appropriate for the various agencies holding and using enemy documents to determine for themselves whether they have title to the physical property in documents held by them or are making unauthorized use in derogation of the rights therein. In the event that any agency deems it necessary that title to certain physical documents in the United States be obtained by this government, or that the right to publish or otherwise exploit the documents in this country be acquired, it would appear that such results could be achieved by (1) appropriate legislation, (2) appropriate provisions in peace treaties with Germany and Japan, or (3) vesting action by this Office under the Trading with the Enemy Act. Since this Office is not fully informed as to the nature and extent of the problems of the various agencies with reference to the holding and use of enemy documents, it cannot be determined at this time whether the third of the above mentioned alternatives (vesting action) would be the most appropriate and desirable.

It is suggested that the various agencies examine and report on the extent of their holdings and use of documents and the problems related thereto, and that they and the Conference recommend which of the above mentioned alternatives would be most appropriate. If it should be the sense of the Conference and interested agencies that vesting action is preferable, this Office will then be in a position to consider the advisability of vesting. It should be noted that vesting action would entail administrative problems for this Office involving the establishment of procedures for vesting, responsibility for administering the property vested, arrangements for the custody of the documents and use of the rights, and the possibilities of claims and litigation arising from such vesting which this Office would have to entertain or defend.

By virtue of section 39 of the Trading with the Enemy Act, as amended, no restitution of vested property to Germany or Japan, or nationals thereof, may be effected subject to the narrow category of exceptions provided in section 32 of the Act. Therefore, in general, the rights in German and Japanese material subject to copyright which have been vested cannot be returned, and by the same token neither can the physical property which has been vested. Of the latter category of property, as has been indicated, except for motion picture film, there is very little which has heretofore been vested. If the physical property or intangible rights in documents should be vested at the request of any agency, the Trading with the Enemy Act would preclude return to or claim for compensation by the former enemy owners.

This Office also has investigatory powers under the Trading with the Enemy Act, as amended, and in connection with its vesting and claims procedures and cases in litigation has acquired various types of documents both in this country and from Germany and Japan. The documents acquired in this country were from business enterprises in which there were enemy interests and consist of such things as books of account, correspondence, contracts, memoranda, and other corporate and business records.

The Department of Justice has maintained a mission in Germany to make investigations for the same purposes and has received similar material from there. In the main, however, the materials received from Germany were either photostatic copies or English translations and not the original documents, although there are some original documents in our possession. This Office has also received from Japan through SCAP copies of Japanese documents but apparently no originals.

The documents and copies held have not been catalogued and cataloguing cannot readily be accomplished, since the materials are scattered among voluminous files. It is believed that there are few, if any, official government records among the documents held, since photostatic copies were usually furnished where such information was required.

Documents obtained through investigation have, however, not been formally vested, except in such instances as where a business enterprise in this country was vested instead of stock ownership or an interest therein, and unless such action is taken would be subject to return. Inasmuch as such material is being held pending action upon claims and in litigation, it is not desirable that it be returned until it has served its purpose.

If it appears that general restitution of non-vested enemy documents should become imminent, this Office will probably vest documents pertaining to claims and litigation in order that they may be retained until their purposes have been served. Rights in these documents have not been vested and generally it is not contemplated that such action will be taken since there does not appear to be any value in their publication.

Office of Alien Property
Department of Justice

(Signed) Harold I. Baynton

Harold I. Baynton
Acting Director

C O P Y

February 1950

REPORT ON HOLDINGS OF CAPTURED ENEMY DOCUMENTATION

CENTRAL AIR DOCUMENTS OFFICE
(Army-Navy-Air Force)

1. Nature of Present Holdings

a. Approximately 55,000 German air-technical documents. These documents have been screened out of an estimated 1500 tons of documentary material which had been collected in Germany by air-technical intelligence teams of the then Army Air Forces and the Navy. Pre-screening in the field reduced this bulk to some 250 tons, which were turned over to the Air Documents Research Center of A-2, United States Strategic Air Forces in Europe, in London, England. Late in 1945 this office was transferred to Wright Field, with its personnel and holdings, and re-established as the Air Documents Division of the Intelligence Department, Headquarters Air Material Command. (The Air Documents Division is the direct predecessor of the present Central Air Documents Office of the Army, Navy, and Air Force.)

The Air Documents Division thoroughly screened the captured material and selected for processing all documents considered to be of primary air-technical interest. Processing included microfilming, cataloging, abstracting, etc. An extensive card index was established, cataloging on over 300,000 catalog cards the 55,000 documents selected. About 30 copies of this catalog were established at strategic places in this country, Canada, and England. (Copies of the card index and all microfilm were supplied to the British as a result of an agreement between the U. S. and British Governments, which permitted removal of the captured documents from London to Wright Field.)

Side products of this project were a comprehensive German-English Dictionary, which is now available commercially; definitions of codes, symbols, etc.; some 5000 complete translations; translation lists of all known translations, etc. As the card index proved expensive and difficult to establish and maintain by small organizations, a desk catalog was prepared which listed all cataloged documents in book form, with additional lists provided to permit selection by subject, author, model, code, etc.

In addition to the documents, there were approximately one million drawings and large quantities of motion picture and microfilm. These, too, have been sorted and screened. The processing of this material was completed in August 1947, and hundreds of thousands of copies of microfilm and translations have been distributed.

Material which was not considered of primary air-technical interest, amounting to approximately 800,000 items, was shipped to the Office

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of Technical Services of the Department of Commerce but later returned to the Central Air Documents Office (CADO), since the Office of Technical Services did not have the facilities to process these documents. In the meantime, the scope of CADO had been broadened considerably, and a second screening of the returned documents yielded several thousand additional documents which were included in the new CADO Technical Index. This latter index catalogs current technical data, both foreign and domestic, and also includes those German documents which are still considered of current value.

b. The number of Japanese documents in our holdings is comparatively small and numbers only a few thousand. Complete translations, or at least English language digests, are available of all Japanese documents which were originally considered as being of general air-technical value.

2. Policies with Respect to Official and Unofficial Access Thereto

a. The documentation services of CADO are available only to agencies and qualified contractors of the Armed Forces. Copies of all unclassified captured documents have been made available to the Office of Technical Services, Department of Commerce. In addition, unclassified material is available, upon request, to all other non-military government agencies. At present, requests for classified material, including classified captured documents, must be approved by the Directorate of Intelligence, Headquarters USAF. (The number of classified captured documents is relatively small and includes only such reports as concern current classified projects of the Armed Forces.)

A different arrangement exists for reports on captured technology which had been handled, until a few months ago, by the Scientific Reports Division of the Joint Intelligence Objectives Agency, Joint Chiefs of Staff (CIOS, BIOS, FIAT, and similar reports). The Scientific Reports Division, with functions and holdings of some 80,000 items, was recently turned over to CADO. As a result, CADO can supply JIOA material, both classified and unclassified, to all government agencies which have previously been served by the Scientific Reports Division.

3. Commitments or Understandings of a Governmental Nature Affecting Holdings

a. As mentioned under Item 1, an agreement existed between the U. S. and British governments permitting removal of the captured German documents from the collection center of the Air Documents Research Center in London and their transfer to Wright Field. In turn, the U. S. Government was to provide copies of the card index and all microfilms. Since these conditions have been fulfilled, no further obligations or commitments are considered to exist. Exploitation reports are still being received under the JIOA agreement, but their number has become negligible.

4. Present

4. Present Policies As to Restitution

a. In one instance the then Air Documents Division had been requested to return certain drawings and handbooks which were required by a German manufacturer to resume peace time production of his products. In general, it is not believed that CADO will be faced by this problem, as practically all the material still in its possession concerned the manufacture of war material. Books which were originally included in the holdings of the Air Document Research Center were turned over to the Library of Congress. Additional books were found at a later date and have been offered to the Library of Congress, which has this matter under advisement at this writing. It is possible that some of these books may have to be returned to Germany.